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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,173	07/05/2007	Shinya Nagata	5553NA3-1	5331
62574	7590	09/29/2009		
Jason H. Vick Sheridan Ross, PC Suite # 1200 1560 Broadway Denver, CO 80202			EXAMINER NATNITHADHA, NAVIN	
			ART UNIT 3735	PAPER NUMBER
			NOTIFICATION DATE 09/29/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jvick@sheridanross.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,173	<b>Applicant(s)</b> NAGATA ET AL.	
	<b>Examiner</b> NAVIN NATNITHITHADHA	<b>Art Unit</b> 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12, 14 and 16-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12, 14 and 16-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20090903</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 August 2009 has been entered.

### ***Response to Amendment***

2. According to the Amendment, filed 26 August 2009, the status of the claims is as follows:

Claims 12 and 16-22 are currently amended;

Claim 14 is previously presented; and

Claims 1-11, 13, and 15 are cancelled.

3. The objections to claim 16 is WITHDRAWN in view of the Amendment, filed 26 August 2009.

### ***Response to Arguments***

4. Applicant's arguments, see Remarks, pp. 7-8, filed 26 August 2009, with respect to the rejection of claims 12, 14, and 16-22 under 35 U.S.C. 103(a) as being

unpatentable over Bornn et al, U.S. Patent No. 5,348,008 A ("Bornn"), in view of Whitmore et al, U.S. Patent No. 3,268,845 A ("Whitmore"), have been fully considered, and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

### ***Claim Objections***

5. Claim 16 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 16 recites the preamble "[a] respiratory information analysis system", and then, recites "comprising the garment according to claim 12". Thus, claim 16 does not further limit the subject matter of the previous claim 12 (the "system" is broader than the "garment").

6. Claims 19-21 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 19-21 recite the preamble "[t]he respiratory information analysis system", and then, recites "the respiratory information analysis device or the program according to claim 17". Thus, claims 19-21 do not further limit the subject matter of the previous claim 17 (the "system" is broader than the "device or program"). In addition, there is no "program" recited in claim 17.

7. Claim 17 is objected because it recites the limitation "the conductive member" in line 20. There is insufficient antecedent basis for this limitation in the claim.
8. Claim 18 is objected because it recites the limitation "the conductive member" in line 26. There is insufficient antecedent basis for this limitation in the claim.
9. Claims 17 and 18 are objected to because of the following informalities: the limitation "wherein the conductive member of the respiratory winding around vicinity of chest..." appears to be a typographical error (there appears to be a word or phrase missing). Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claim 18 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A program is positively recited, and thus the claim is not directed to one of the four statutory classes of patentable subject matter. See MPEP 2106 IV B 1(a); and *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3735

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 12, 14, and 16-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Sackner et al, U.S. Patent No. 6,551,252 B1A ("Sackner").

Claims 12, 14, and 16: Sackner teaches the following:

A garment 1 for measuring biological information formed of a nonconductive material having elasticity so as to fit on the upper body of an examinee (see col. 13, ll. 28-48, and figs. 1-10),

the garment 1 being characterized in having of respiratory information measuring sensors 4-7, each of said sensors 4-7 including a conductive member 20-25 varying its electric resistance according to variation of constitution of the examinee through breathing thereof under a turning-on-electricity state and capable of delivering electric information based on the variation of electric potential to a respiratory information analysis device 3, 33 or 34 (see col. 11, l. 25, to col. 13, l. 13, col. 13, l. 27, to col. 14, l. 58, and col. 19, l. 55, to col. 20, l. 39),

wherein:

a portion of the plurality of respiratory information measuring sensors 4 are disposed at a perimeter of a chest region and another portion of the plurality of respiratory information measuring sensors 6 are disposed at a perimeter of an

abdominal region of the garment (Sackner teaches that “additional sensor bands may be present”, see col. 13, ll. 49-66, and col. 30, ll. 10-35) ,

electric resistance of the plurality of respiratory information measuring sensors 4-7 varies with expansion and contraction of one of the length and cross-section of the conductive member 20-25 in response to the examinee's breathing (see col. 13, l. 59, to col. 14, l. 58),

the conductive member 20-25 of each of the respective plurality of respiratory information measuring sensors 4-7 is arranged at either a position winding around a chest region of the examinee and a position winding around an abdominal region of the examinee (see figs. 1-5), and

the respiratory information analysis device 3, 33 or 34 selects at least one output of at least one sensor in the chest region and at least one output of at least one sensor in the abdominal region (see col. 27, ll. 27-31, and col. 30, ll. 10-35).

Sackner additionally teaches subject matter of the dependent claims 14 and 16 (see col. 13, l. 60, to col. 14, l. 17, col. 16, l. 49, to col. 17, l. 3, col. 22, ll. 47-60, and col. 25, l. 31, to col. 28, l. 33).

Claims 17 and 19-21: Sackner teaches the following:

A respiratory information analysis device comprising:

electric information acquisition means 3 for acquiring electrical information delivered from a plurality of respiratory information measuring sensors 4-7, said sensor 4-7 arranged on a garment 1 for measuring biological information;

electric information comparison means for comparing a plurality of amplitudes of the acquired electric information (see col. 30, ll. 10-35);

electric information selection means for selecting the respiratory information measuring sensors 4-7 detecting a larger amplitude as electric information to be based on an output of respiratory information in accordance with the comparison result of the electric information comparison means (see col. 30, ll. 10-35);

respiratory information analysis means 3 or 33 for judging a variation cycle of the electric information detected with the respiratory information measuring sensors 4-7 selected by the electric information selection means and analyzing respiratory information in accordance with the variation cycle (see col. 30, ll. 10-35); and

respiratory information output means ("RF transmitter") for outputting respiratory information data in accordance with the analyzed respiratory information (see col. 30, ll. 36-65),

wherein the respiratory information measuring sensors 4-7 are disposed at a perimeter of the chest and a perimeter of abdominal in the garment 1 (see figs. 1-5), and

wherein electric resistance of the respiratory information measuring sensor 4-7 varies with expansion and contraction of one of the length and cross-section of the conductive member 20-25 in response to the examinee's breathing (see col. 13, l. 59, to col. 14, l. 58),



wherein the conductive member 20-25 of the respiratory winding around vicinity of chest of the examinee and a position winding around vicinity of abdominal of the examinee (see figs. 1-5), and

wherein a respiratory information analysis device connectable to the garment selects one of outputs of the sensors of chest and abdominal(see col. 27, ll. 27-31, and col. 30, ll. 10-35).

Sackner additionally teaches subject matter of the dependent claims 19-21 (see col. 13, l. 60, to col. 14, l. 17, col. 16, l. 49, to col.17, l. 3, col. 22, ll. 47-60, and col. 25, l. 31, to col. 28, l. 33).

Claims 18 and 19: Because the subject matter of claim 17 directed to a device is not distinct from the subject matter of claims 18 and 19 directed to a computer program and a method, respectively, Sackner anticipates claims 18 and 19 for the same reasons as that provided for the rejection of claim 17 above.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is

(571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Navin Natnithithadha/  
Patent Examiner, Art Unit 3735  
09/24/2009